

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

LEO E. STRINE, JR.
VICE CHANCELLOR

New Castle County Courthouse
Wilmington, Delaware 19801

Submitted: January 25, 2006
Decided: February 7, 2006

John H. Benge, Jr.
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***RE: John H. Benge, Jr. v. Oak Grove Motor Court, Inc., A Delaware Corporation; Donna Kay Lovett Benge, individually and as Trustee; Paul DeWitt Lovett, III; and James Marsh Lovett
C.A. No. 1837-N***

Dear Mr. Benge and Counsel:

Dissatisfied with this court's decision to dismiss his case for lack of subject matter jurisdiction without prejudice to his right to proceed in Family Court, the plaintiff, John H. Benge, Jr., filed a motion for reargument. In large part, Benge reiterates his earlier arguments as to the merits of his case, but in this motion he also contends that this court has misapprehended the nature of the relief requested in its decision to dismiss his case. Benge is trying to reopen a marital property division and seeks his share of marital property through an equitable lien and an injunction against transfer of non-marital

property. Benge maintains that the Family Court is without the jurisdiction to provide the equitable relief he requests should he prevail before that Court.

The standard applicable to a motion for reargument is well settled. A court may grant reargument or reconsideration under Court of Chancery Rule 59(f) when it appears that the court “overlooked or misapprehended the factual or the legal principles governing the disposition of the motion.”¹ The standard is flexible, allowing the court to grant a motion for reargument if the “court has overlooked a decision or principle of law that would have a controlling effect or the court has misapprehended the law or the facts so that the outcome of the decision would be affected.”² A motion for reargument will not be granted, however, when a party merely restates its prior arguments.³

Because I discussed the factual history of this case in the earlier decision to dismiss, I will not repeat it here. In his motion for reargument, Benge contends that because his wife has sold the assets she received pursuant to their oral marital property division agreement and has used the proceeds to purchase replacement non-marital assets, the Family Court will not be able to grant the equitable relief he needs to reclaim his share of marital property. This is essentially the same argument Benge submitted to this court previously.

¹ *VGS, Inc. v. Castiel*, 2003 WL 1794210, at *1 (Del. Ch. Mar. 27, 2003).

² *Id.* (citing *PNC Bank v. Marty’s Mobile Homes, Inc.*, 2001 WL 849866, at *1 (Del. Ch. July 10, 2001)).

³ *E.g., Miles, Inc. v. Cookson America, Inc.*, 677 A.2d 505, 505 (Del. Ch. 1995).

In relying on this argument, however, Benge gets ahead of himself in his analysis of whether the Family Court has the authority to grant the equitable relief he seeks.

Before any equitable relief may be granted, Benge must demonstrate that he has an economic interest in the property because his ex-wife, Donna Kay Lovett Benge (“Lovett Benge”) breached the unusual oral agreement that Benge alleges was part and parcel of a division of marital property in which, by Benge’s own admission, the property was titled exclusively in Lovett Benge’s name. This issue is undoubtedly within the jurisdiction the General Assembly has granted to the Family Court.

The Family Court’s jurisdiction, which is proscribed and limited by statute, clearly includes jurisdiction over agreements dividing and transferring marital property as well as all other issues “incident to marriage, separation, and divorce.”⁴ In 1990, the General Assembly made plain that the Court of Chancery’s jurisdiction and equity powers over “division and distribution of marital property”⁵ was terminated and reassigned to the Family Court.⁶ There is no question that under current law the Family Court has

⁴ 13 *Del. C.* § 507(a).

⁵ 13 *Del. C.* § 507(a). Section 507 is entitled “Jurisdiction in Family Court; termination of chancery jurisdiction.”

⁶ See Del. H.B. 744, 135th Leg., 1st Spec. Sess. (1990) (amending the previous 13 *Del. C.* § 507 employed by the Court in *Sanders v. Sanders*, 570 A.2d 1189 (1990)); *E.F.L. v. J.M.D.*, 2002 WL 1929538, at *1 (Del. Fam. Ct. Jan. 8, 2002). (noting that § 507 as amended in 1990 gives the Delaware Family Court jurisdiction to resolve any issues resulting from the construction, reformation, enforcement, or rescission of an agreement).

jurisdiction over any agreement between Benge and his ex-wife, including over construction, enforcement, and rescission of that agreement.⁷

Several statutes discuss the jurisdiction and authority of the Family Court. The two most relevant to this case are 13 *Del. C.* § 507 and 10 *Del. C.* § 925(15).⁸ Together, these statutory provisions provide the basis for the Family Court's jurisdiction over agreements related to the division of marital property and also grant the Family Court the authority to issue equitable relief required to resolve such disputes.

Section 507(a) grants the Family Court exclusive jurisdiction over:

[T]he construction, reformation, enforcement and rescission of agreements made between . . . former spouses concerning the payment of support or alimony, the payment of child support or medical support, *the division and distribution of marital property* and marital debts and any *other matters incident to a marriage, separation or divorce*. The Court shall have jurisdiction to resolve *any issues resulting from the construction, reformation, enforcement or rescission of an agreement*.⁹ (emphasis added)

⁷ Even before the amendment of § 507 in 1990, the Family Court had previously found it retained some jurisdiction over separation agreements touching upon marital property. *See E.F.L. v. J.M.D.*, 2002 WL 1929538, at *3 n.13.

⁸ More generally, 10 *Del. C.* § 902, a purpose provision, provides support for the proposition that disputes over marital property are the jurisdiction of the Family Court. That section states, “(a) In the firm belief that compliance with the law by the individual and preservation of the family as a unit are fundamental to the maintenance of a stable, democratic society, the General Assembly intends by enactment of this chapter that 1 court shall have original statewide civil and criminal jurisdiction over family and child matters . . . (b) This chapter shall be liberally construed that these purposes may be realized.” *See also Matthaeus v. Matthaeus*, 2003 WL 1826285, at *3, *5 (Del. Super. Ct. Apr. 7, 2003) (explaining Family Court has exclusive jurisdiction to hear certain claims that are intrinsically related and intertwined with the parties' divorce and granting jurisdiction to hear plaintiff's claims in Superior Court would undermine the legislative intent of creating a special court uniquely trained in the handling of family matters and the resolution of such disputes).

⁹ 13 *Del. C.* § 507(a).

At the same time, § 507(b) terminates the jurisdiction of the Court of Chancery in civil actions for separate maintenance.¹⁰ If an agreement between Benge and his ex-wife does exist, § 507(a) gives the Family Court jurisdiction over that agreement, including the right to interpret, enforce, and rescind that agreement. And if Lovett Benge should dispute the existence of a valid oral agreement, § 507(a) includes the Family Court's exclusive jurisdiction over "any matters incident to a . . . divorce"¹¹ and the "jurisdiction to resolve any issues resulting from the construction, reformation, enforcement or rescission of an agreement."¹²

Section 925, which is a more general jurisdiction provision, states that "The Court and each Judge shall have authority to . . . (15) In any civil action where jurisdiction is otherwise conferred upon the Family Court, it may enter such orders against any party to the action as the *principles of equity* appear to require."¹³ This section has been invoked by the courts to grant the Family Court authority to order specific performance and other forms of equitable relief when equity appears to require it.¹⁴ There is no doubt that under

¹⁰ 13 *Del. C.* § 507(b).

¹¹ 13 *Del. C.* § 507(a).

¹² *Id.* See *T.M.K. v. K.A.K.*, 2002 WL 32121314, at *1 (Del. Fam. Ct. Oct. 23, 2002) (noting that the Family Court has authority to consider separation agreements regardless of whether they are incorporated into an order of the Court) citing *E.F.L. v. J.M.D.*, 2002 WL 1929538, at *3. In addition, § 507(a) has served as the basis for the Family Court's authority to enter equitable relief, such as specific performance, in disputes involving separation agreements. See *E.F.L. v. J.M.D.*, 2002 WL 1929538, *3-*5.

¹³ 10 *Del. C.* § 925 (emphasis added).

¹⁴ See *Wife, S. v. Husband, S.*, 295 A.2d 768, 770 (Del. Ch. 1972) (explaining Family Court can grant specific performance of support agreements); see also *Wilderman v. Wilderman*, 330 A.2d 149, 150 (Del. Super. Ct. 1974) (refusing to assert jurisdiction, the Superior Court explains that the Court of Chancery has held that the civil jurisdiction in matters of support now vested in the

§ 925 the Family Court can issue the equitable relief Bengé requests should he prevail in persuading that Court that his ex-wife breached an agreement related to their marital property.

Thus, as § 507 and § 925 demonstrate, Bengé incorrectly contends the Family Court is without jurisdiction. No misapprehension of fact or law occurred in the dismissal for lack of subject matter jurisdiction that would recommend or require reargument. The Family Court, not the Court of Chancery, is the proper tribunal to hear this case.

The second issue Bengé raises in his motion for reargument is that he named a corporation and his wife's brothers as individual defendants and that the Family Court does not have jurisdiction over the dispute with these defendants. Bengé believes the shares of stock in the Oak Grove Motor Court that his ex-wife received from her mother are marital property that was subject to the alleged oral agreement between him and his ex-wife. He explains that he names that corporation and his ex-wife's brothers as defendants because he wants to ensure that his ex-wife's family does not interfere with any ownership rights he may have in that corporation while his case is pending. Bengé does not allege any current interference by the brothers.

Family Court is of such breadth that the Family Court may exercise all of the jurisdictional powers which historically existed in the Court of Chancery) *citing Wife, P. v. Husband, P.*, 287 A.2d 409, 412-13 (Del. Ch. 1972).

As already explained, the Family Court has exclusive jurisdiction over marital property division agreements,¹⁵ and more broadly, “any other matters incident to a marriage, separation, or divorce.”¹⁶ The Court also has the equitable power to grant equitable relief if needed because this dispute centers on an agreement dividing marital property. The Family Court not only has the authority to order equitable relief¹⁷ to award Benge his interest if that Court finds he has an ownership interest in Lovett Benge’s shares, but also to protect any potential interest Benge may have until the Family Court action is resolved. For example, upon a showing that Lovett Benge is interfering with any potential ownership interest Benge may have in the corporation, the Family Court could enjoin Lovett Benge from voting or alienating her shares without court authorization.¹⁸

Finally, Benge complains that my order dismissing his case without prejudice mandated a transfer to the Family Court under 10 *Del. C.* § 1902. My decision was intended to grant Benge the same benefits as a transfer under § 1902. I believed

¹⁵ 10 *Del. C.* § 925; 13 *Del. C.* 507(a).

¹⁶ 13 *Del. C.* § 507(a). *See also* 10 *Del. C.* § 902.

¹⁷ *See, e.g., L.A.T. v. S.W.*, 2004 WL 2334282, at *1 (stating the Family Court has jurisdiction to partition property under 10 *Del. C.* § 921(14)); *E.F.L. v. J.M.D.*, 2002 WL 1929538, *3-*5 (granting specific performance); *Wife, S. v. Husband, S.*, 295 A.2d at 770 (noting specific performance and other forms of equitable relief are available under § 925).

¹⁸ As noted, there are no facts pled indicating that the other named defendants have hindered Benge’s ownership or taken actions to impair the value of his potential stake. That is, Benge does not even state a claim against them. Assuming that evidence exists to support his allegations of ownership, Benge should present it to the Family Court and seek appropriate provisional relief against his ex-wife’s use of the shares until the case is decided. Benge, of course, has no right to interfere with the use of the shares that Lovett Benge’s brothers indisputably own in the corporation.

dismissal without prejudice was more favorable for Benge because the timeliness of the action did not depend on a transfer and refiling the case would permit Benge to reframe his complaint. But if Benge prefers a transfer, he is within his rights and I am modifying my earlier order to dismiss. Therefore, this case shall automatically BE DISMISSED unless Benge transfers it in a timely manner that satisfies all the requirements of § 1902.

IT IS SO ORDERED.

Very truly yours,

/s/ Leo E. Strine, Jr.

Vice Chancellor